



Bob Ferguson

ATTORNEY GENERAL OF WASHINGTON

Transportation & Public Construction Division

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January 5, 2021

Brian D. Chenoweth
Brooks M. Foster
The Chenoweth Law Group
410 SW Fifth Avenue, Suite 500
Portland, OR 97204

sent via U.S. Certified Mail

also sent via email to: brianc@chenowethlaw.com and bfoster@chenowethlaw.com

RE: ***RCO Grant No. 03-1156D and Project Agreement Amendment #7***
Demand for Repayment of Grant Funds

Dear Messrs. Chenoweth and Foster:

I am writing on behalf of the Washington State Recreation and Conservation Office (RCO) regarding Kitsap Rifle and Revolver Club's (the Club's) failure to comply with the terms of the Project Agreement for RCO Grant No. 03-1156 (respectively, the Project Agreement and Grant), and with the terms of Amendment 7 to the Project Agreement (Amendment 7), and to demand repayment of all Grant monies provided to the Club.

As you are aware, in 2003, RCO provided the Club with grant funding through the Firearms and Archery Range Recreation (FARR) program for the purpose of enabling the Club to construct improvements to its firearm range facilities as part of the Club's Rifle Line Reorientation and Sound Cover project. Specifically, this project was to renovate the rifle line and to improve safety and sound attenuation.

RCO's Project Agreement and Grant to the Club are governed by, *inter alia*, RCW 79A.25.210, which states in part, "Any non-profit organization or agency accepting a grant under this program will be required to pay back the entire grant amount to the firearms range account if the use of the range facility is discontinued less than ten years after the grant is accepted." The corresponding regulation, WAC 286-30-040, similarly requires repayment of the entire grant amount if a conversion occurs less than ten years after the grantee receives final reimbursement under the grant.

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The Project Agreement reiterates these requirements. Section 25: Restriction on Conversion, requires that facilities funded with state grant funds remain open and available to the public for ten years following final reimbursement by RCO of Grant funds. RCO's final reimbursement to the Club occurred on February 10, 2009. For the Club to avoid violating Section 25 and creating a conversion, therefore, the specific facilities funded through the Project Agreement were required to be and remain open to the public for their intended (and funded) purpose until February 10, 2019.

The Club is currently closed to shooting high powered rifles, and has not been continually open for those purposes since 2012. RCO, at the Club's request, made numerous efforts to work with the Club to help avoid a formal declaration of conversion of use, which requires repayment of grant funding.

On March 1, 2018, RCO's Board of Directors declared the Club to have converted the Grant funds and ordered the Club to reimburse RCO the amount of \$46,965.16. Simultaneously, RCO's Board agreed to stay the effect of its order if the Club agreed to amend the Project Agreement to ensure prompt and continuous opening of the range facilities.

On February 28, 2018, the Club executed Amendment 7 to the Project Agreement. In the recitals to Amendment 7, the Club acknowledged that the firearm facility improvements funded through the Grant "have been closed to the shooting of firearms from 2012 forward for extensive periods of time and such facilities are currently closed for that purpose." The Club further acknowledged in the recitals that, effective on March 1, 2018, RCO's Board had declared a conversion requiring full repayment of the sum certain of \$46,965.16, with the proviso that the conversion could be stayed if the Club agreed to an amendment with specified conditions.

The operative language of Amendment 7 contains the specified conditions to which the Club agreed, and include, *inter alia*, the following:

- Extending the 10-year period during which the facilities must remain open by adding to the 10 years both the 841 days the facilities had been closed to the 10-year period and all future days the facilities are closed;
- "Firearm" and "shooting" refers to weapons using explosives such as gunpowder, and do not include air guns;
- The facilities will be considered "open" only during days during which the facilities are in fact open and are not subject to an injunction prohibiting firearm shooting;
- Notwithstanding any other requirement, "if the Club is not open to the shooting of firearms for at least 60 consecutive days, by January 1, 2021, the Director of the RCO may declare a conversion has occurred and require that the Club repay the entire grant amount of \$46,965.16, as of the date of such declaration;" and

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- A reservation of the RCO Board's right to declare a conversion if the Board determines that the Club is not complying with Amendment or is not diligently pursuing necessary permits.

The RCO Director has determined that Club facilities paid for by RCO Grant funds are not and have not been open and available to the public for the shooting of firearms for 60 consecutive days prior to January 1, 2021, as required by the terms of Amendment 7¹. Accordingly, the Director has declared that a conversion has occurred and requires that the Club repay the entire grant amount of \$46,965.16. A copy of the Director's declaration of conversion is enclosed herewith.

RCO demands that the Club pay the amount of \$45,965.16 to RCO immediately. I have been directed to move forward with legal remedies if payment is not received on or before January 31, 2021. If RCO is forced to file suit, claims will include conversion, breach of both the original Project Agreement (which will include a request for pre-judgment interest based on a sum certain), and of the accord set forth in Amendment 7.

Please contact the undersigned if you have any questions regarding this demand.

Sincerely,

s/ David B. Merchant

DAVID B. MERCHANT
Assistant Attorney General
(360) 753-1620

DBM/MC
Enclosure

¹ On December 29, 2020, Washington State Court of Appeals Division II affirmed the decision of the trial court that the Club had the ability to obtain permits and take other steps necessary to lift Kitsap County's injunction against operating the range, but had failed to take those steps. *Kitsap County v. Kitsap Rifle and Revolver Club*, No. 53878 (Unpublished Opinion dated December 29, 2020).